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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/624,098	07/24/2000	Mario Tenuta	2527-1A	5268

7590

07/02/2002

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EXAMINER

NAFF, DAVID M

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 07/02/2002 /1

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/054098

Applicant(s)

Tenuta et al

Examiner

1/cpt

Group Art Unit

165/

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 4/15/02
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-15 + 20 is/are pending in the application.
- ☐ Of the above claim(s) is/are withdrawn from consideration.
- ☐ Claim(s) is/are allowed.
- ☒ Claim(s) 1-15 + 20 is/are rejected.
- ☐ Claim(s) is/are objected to.
- ☐ Claim(s) are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

The amendment of 4/15/02 has been entered. The amendment amended the specification and claims 4, 5, 9 and 20

Claims examined on the merits are 1-15 and 20 which are all claims in the application.

5 The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The proposed drawings will be submitted to the draftsman for review.

10 Claims 1-15 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al (6,074,638) in view of Raskin et al (6,159,270) and Weltzien et al (4,919,702), and if necessary in further view of Behel Jr. (5, 366, 533) for the type of reasons set forth in the office action of 1/15/02.

15 The claims are drawn to a method of controlling soilborne pathogens in soil by adding to the soil a nitrogen containing material and a pH reducing agent to reduce the soil pH to below 5.5.

Anderson et al disclose that potato scab disease is known to be controlled by increasing soil acidity (col 3, lines 40-43).

20 Raskin et al disclose adding citric acid to soil to reduce the pH of the soil to 4.5-5.5 in removing contaminant metals in soil.

Weltzien et al disclose adding a fertilizer to soil that contains ascorbic acid (col 3, lines 19-29) and a nitrogen source (col 5, lines 25 and 34-37).

Babel Jr. discloses adding to soil a citrus by-product that provides citric acid in soil to complex with iron and make the iron available for plants (col 2, lines 55-66 and col 6, line 56).

When controlling potato scab disease by increasing soil acidity as disclosed by Anderson et al, it would have been obvious to add citric acid to the soil to provide the increased acidity as suggested by Raskin et al, and if needed Babel Jr, disclosing adding citric acid to soil, and by Weltzien et al disclosing adding to soil a fertilizer containing ascorbic acid and a nitrogen source. Combining a nitrogen source with ascorbic acid as disclosed by Weltzien et al would have suggested combining a nitrogen source with acid added to provide the increased soil acidity required to control potato scab disease as disclosed by Anderson et al since a nitrogen source would have obviously been expected to provide nitrogen as a nutrient for a growth of a plant requiring nitrogen for growth. Providing a pH below 5.5 to control potato scab disease would have merely required routine experimentation to determine an optimum pH that provides a desired amount of control. The limitations of dependent claims would have been matters of obvious choice within the skill of the art in view of the disclosures of the references.

Applicant's arguments filed 4/15/02 have been fully considered but they are not persuasive.

The arguments are unpersuasive since the references clearly suggest lowering pH to control soilborne pathogens. The fact that the prior art may not suggest applicants' mechanism that happens during pH lowering does not make lowering the pH unobvious. Converting nitrite to nitrous

acid would have been inherent when lowering pH as suggested by the references.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

5 A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened
10 statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15 Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M. Naff whose telephone number is (703) 308-0520. The examiner can normally be reached on Monday-Thursday and every other Friday from about 8:30 AM to about 6:00 PM.

20 If attempts to reach the examiner by telephone are unsuccessful, a message can be left on voice mail.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn, can be reached at telephone number (703) 308-4743.


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The fax phone number is (703) 872-9306 before final rejection or
(703) 872-9307 after final rejection.

Any inquiry of a general nature or relating to the status of this
application or proceeding should be directed to the Group receptionist
5 whose telephone number is (703) 308-0196.

10 DMN
7/1/02


DAVID M. NAFF
PRIMARY EXAMINER
ART UNIT 1651